

**WFMT, a Division of Chicago Educational Television Association and American Federation of Television and Radio Artists, Chicago Local, AFL-CIO. Case 13-CA-30851**

July 31, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On April 8, 1992, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 13-RC-17937. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On June 30, 1992, the General Counsel filed a Motion for Summary Judgment. On July 2, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.<sup>1</sup>

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not

raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a not-for-profit corporation with an office and place of business in Chicago, Illinois, has been engaged in the operation of a radio station. During the calendar year preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$100,000 and performed and sold services valued in excess of \$50,000 directly to various enterprises located in states other than the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held March 1, 1990, the Union was certified on January 16, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time Chicago based employees employed by the Employer whose facility is currently located at 303 E. Wacker Drive, Chicago, Illinois, but excluding Senior Vice-President and General Manager, Vice President of Finance, General Sales Manager, Program Director, Director of Fine Arts Network, professional employees, managerial employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

**B. Refusal to Bargain**

Since October 17, 1991, the Respondent has refused to bargain with the Union by changing the terms and conditions of employment by increasing the monthly employee contributions for health and dental insurance. This is a mandatory subject of collective bargaining. The Respondent engaged in these acts and conduct without prior notice to and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the employees with respect to such acts and conducts and the effects of such acts and conduct. We find that this refusal constitutes an

<sup>1</sup> See the Board's Decision and Order (304 NLRB No. 121, Aug. 27, 1991 (not printed in Board volumes)) in an earlier unfair labor practice proceeding involving the Respondent relating to Case 13-RC-17937. There the Respondent failed to honor the certification and refused to provide the Union with necessary and relevant information. It is our policy to decline a second bargaining order as to the same certification, where the first order is still extant and where no useful purpose would be served by a second order (see *Canton Sign Co.*, 186 NLRB 237 (1970)). However, where the appropriate relief for the alleged unfair labor practices is reimbursement to unit employees and that relief is not available under the earlier order, we will issue a second bargaining order. See, e.g., *Eagle Material Handling, Inc.*, 227 NLRB 174, 178 fn. 18 (1976).

unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after October 17, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit by unilaterally increasing the monthly employee contributions for health and dental insurance, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We shall further order the Respondent to reimburse the unit employees for any losses incurred as a result of the unilateral increase in employee contributions to health and dental insurance. Such reimbursement shall be paid with interest according to the formula described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, WFMT, a Division of Chicago Educational Television Association, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with American Federation of Television and Radio Artists, Chicago Local, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit by unilaterally increasing the monthly employee contributions for health and dental insurance.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following

appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time Chicago based employees employed by the Employer whose facility is currently located at 303 E. Wacker Drive, Chicago, Illinois, but excluding Senior Vice-President and General Manager, Vice President of Finance, General Sales Manager, Program Director, Director of Fine Arts Network, Professional employees, managerial employees, guards and supervisors as defined in the Act.

(b) Reimburse the unit employees for any losses incurred as a result of the unilateral increase in employee contributions to health and dental insurance in the manner described in the remedy section of this decision.

(c) Post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with American Federation of Television and Radio Artists, Chicago Local, AFL-CIO as the exclusive representative of the employees in the bargaining unit by unilaterally increasing the monthly employee contributions for health and dental insurance.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time Chicago based employees employed by the Employer whose facility is currently located at 303 E. Wacker Drive, Chicago, Illinois, but excluding Senior Vice-Presi-

dent and General Manager, Vice President of Finance, General Sales Manager, Program Director, Director of Fine Arts Network, Professional employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL reimburse our employees for any losses incurred as a result of our unilateral increase in health and dental insurance, contributing with interest.

WFMT, A DIVISION OF CHICAGO EDUCATIONAL TELEVISION ASSOCIATION